

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

RECEIVED

OCT 17 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Revision of the Commission's)
Rules to Ensure Compatibility) CC Docket No. 94-102
with Enhanced 911 Emergency)
Calling Systems)

To: The Commission

**REPLY COMMENTS OF APCO REGARDING
PETITION FOR RECONSIDERATION OF VOICESTREAM WAIVER**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") hereby submits the following Reply to the Opposition of VoiceStream Wireless ("VoiceStream") and other Comments filed in response to the *Public Notice*, DA 00-2231, released September 29, 2000, which provides for the filing of "oppositions" to APCO's Petition for Reconsideration of the waiver granted VoiceStream in the *Fourth Memorandum Opinion and Order*, FCC 00-326, released September 8, 2000 ("*Fourth MO&O*"), in the above-captioned proceeding.

Among the issues raised in the Petition for Reconsideration was that the Commission should have sought public comment prior to granting a waiver to VoiceStream. APCO agreed with Commissioners Ness and Tristani that the waiver has the effect of a rulemaking, as it has a substantial impact on millions of wireless subscribers and creates a potential third alternative for compliance with the Commission's rules. Whether or not public comment was required as a matter of law, it was certainly necessary as a matter of good public policy and administrative process.

No. of Copies rec'd 048
List ABCDE

The Wireless Telecommunications Bureau's decision to issue a *Public Notice* inviting oppositions to APCO's Petition, rather than relying on Section 1.106 to govern such filings, was an obvious attempt *ex post facto* to "cure" the failure to seek public comment on the VoiceStream waiver. However, APCO questions whether a public request for oppositions to the Petition for Reconsideration is fair substitute for seeking public comment on the wisdom of the waiver itself. Moreover, the Commission should have sought public comment *prior* to granting the waiver, not after the fact.

The critical element relied upon by VoiceStream in seeking the waiver is whether it, as a GSM carrier, has any reasonable alternatives to its preferred NSS/E-OTD approach. Two comments filed in response to the *Public Notice* shed further light on this important issue. Qualcomm, Incorporated ("Qualcomm") has submitted a copy of a technical report prepared in 1999 by Omnipoint Technologies, Inc., which had been a VoiceStream subsidiary.¹ The technical report provides evidence indicating that uplink TOA technology was not only a viable option for GSM, but that it was also superior to E-OTD. Of course, VoiceStream challenges the relevance of the Omnipoint technical report in its Opposition to APCO's Petition for Reconsideration. APCO has neither the expertise nor the resources to provide an independent evaluation of the validity of either the Omnipoint technical report or VoiceStream's response. However, information presented in the report appears, at minimum, to raise serious questions regarding VoiceStream's claims that E-OTD was its only option.

¹ Comments of Qualcomm Incorporated in Support of Petition for Reconsideration, filed October 29, 2000.

A second enlightening comment was filed by Allen Telecom, Inc. (“Allen”), a provider of location technologies.² Allen reports in its Comments that it “could adapt its existing technologies for use with GSM systems fairly quickly if requested by a carrier,” and that it had approached VoiceStream and offered to develop its network-based TDOA and AOA technologies for VoiceStream’s GSM system. Thus, once again the issue arises as to whether VoiceStream selected the only available technology, or whether it pursued a waiver merely to implement its preferred technology based upon cost and other factors not relevant to the Commission or to the public interest.

VoiceStream’s Opposition also relies heavily on its October 2, 2000 “Semi-Annual Report,” which provides additional results from its Houston trial. However, perhaps because the Commission did not seek specific details, the Semi-Annual Report does little more than update the information that VoiceStream had previously submitted. The Houston trial is still limited to a fairly small suburban area with little or no terrain variation and no “urban canyons.” Furthermore, there are still no results for 9-1-1 calls from within buildings or moving vehicles. Other location technologies long ago submitted extensive and comprehensive test results in that regard.

VoiceStream’s relative progress towards implementation is also troublesome. Based upon the October 2 Semi-Annual Report, VoiceStream has yet to make any firm financial commitments for implementing NSS/E-OTD. As of October 2, it was still “negotiating” with its infrastructure and handset vendors.³ Thus, despite unsupported

² Comments of Allen Telecom, Inc. in Support of Petition for Reconsideration of VoiceStream Waiver, filed October 10, 2000.

³ VoiceStream Semi-Annual Report at 2 (Oct. 2, 2000).

statements to the contrary, the Commission must question whether VoiceStream is in fact prepared to meet even the relaxed schedule allowed in the waiver.

If VoiceStream does not provide E-OTD according to schedule, the only location capability available to its subscribers will be NSS, which only provides accuracy of 1000 meters, for 67 percent of calls. APCO's Petition points out that such accuracy is of minimal value in locating emergency callers in time to provide critical assistance.⁴

VoiceStream responds by arguing that NSS is still an improvement over Phase I, as it will supposedly improve the ability to route calls to the correct PSAP.

First, the goal here is to provide accurate *Phase II capability*, not just Phase I, which VoiceStream must provide in any event. Second, Phase I cell site information will, in the vast majority of cases, be more than sufficient for call routing purposes. A far greater concern are the instances where NSS will not provide sufficiently accurate information to find a caller. In the absence of full Phase II capability, that will be the more critical role of NSS. Third, for caller location purposes, NSS is of minimal value, especially in densely populated areas (which already have relatively small cell sites). The first few minutes of an emergency are critical in saving a life, stopping the spread of a fire, or apprehending a criminal. In many of those cases, the difference in time between locating an emergency in a typical cell site, compared to finding an emergency within one square kilometer, is almost irrelevant. Either way, it may too late.

Finally, a few other commenters express concern that reconsideration of the VoiceStream waiver could delay E9-1-1 deployment. APCO is obviously opposed to any such delay. However, APCO continues to believe that the VoiceStream waiver will

⁴ See also Comments of International Association of Fire Chiefs, filed September 28, 2000; Letter from International Association of Chiefs of Police, dated September 1, 2000, filed September 8, 2000.

actually lead to more delay, due to (a) VoiceStream's questionable ability to implement its preferred technology in a timely manner, and (b) because of the precedent established for other carriers to seek additional waivers and delayed implementation. Somewhere, the Commission must draw a line, and the VoiceStream waiver, unless reconsidered, was a missed opportunity to do so.


CONCLUSION

For the reasons discussed above and in APCO's Petition for Reconsideration, the Commission should reconsider its grant of a waiver to VoiceStream.

Respectfully submitted,

ASSOCIATION OF PUBLIC-SAFETY
COMMUNICATIONS OFFICIALS-
INTERNATIONAL, INC.

By:



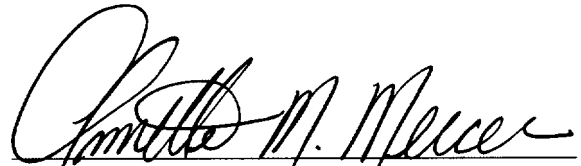
Robert M. Gurss
SHOOK, HARDY & BACON, L.L.P.
600 14TH Street, NW, Suite 800
Washington, DC 20005
(202) 662-4856

October 17, 2000

CERTIFICATE OF SERVICE

I, Annette M. Mercer, legal secretary in the law office of Shook, Hardy & Bacon, do hereby certify that on this 17th day of October, 2000, a copy of the foregoing document "Reply Comments of APCO Regarding Petition for Reconsideration of Voicestream" was mailed, postage pre-paid, to the following:

Robert A. Calaff, Esq.
Corporate Counsel
Voicestream Wireless
1300 Pennsylvania Ave, NW
Suite 700
Washington, DC 20004



Annette M. Mercer